

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
401	37:231(g) (less last proviso of last sentence).	Oct. 12, 1949, ch. 681, § 102(g) (less last proviso of last sentence), 63 Stat. 804; Sept. 8, 1950, ch. 922, § 1, 64 Stat. 794; Mar. 23, 1953, ch. 8 (as applicable to § 102(g)), 67 Stat. 6; June 30, 1955, ch. 250, § 103 (as applicable to § 102(g)), 69 Stat. 224; Mar. 23, 1959, Pub. L. 86-4, § 3 (as applicable to § 102(g)), 73 Stat. 13.

The words “lawful”, “at all times and in all places”, “except as hereinafter limited in this subsection”, and “in addition to those persons otherwise defined as dependents in this subsection” are omitted as surplusage. In clause (1), the word “spouse” is substituted for words “wife” and “husband”. Clause (2) is substituted for the 16th through 24th words of the first sentence of section 231(g) of existing title 37 and the third sentence (less last proviso) of section 231(g) of existing title 37. Clause (3) is substituted for the second sentence of section 231(g) of existing title 37 and the last sentence (less provisos) of section 231(g) of existing title 37. The second sentence is substituted for the last proviso of the third sentence of section 231(g) of existing title 37. The last sentence is substituted for the first proviso of the last sentence of section 231(g) of existing title 37.

AMENDMENTS

1994—Subsec. (b)(1)(B), Pub. L. 103-337 substituted “placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the child by the member” for “placement agency for the purpose of adoption”.

1993—Subsec. (a)(4), Pub. L. 103-160 added par. (4).

1991—Pub. L. 102-190 amended text generally. Prior to amendment, text read as follows: “In this chapter, the term ‘dependent’, with respect to a member of a uniformed service, means—

“(1) his spouse;

“(2) his unmarried child (including any of the following categories of children if such child is in fact dependent on the member: a stepchild; an adopted child; or an illegitimate child whose alleged member-father has been judicially decreed to be the father of the child or judicially ordered to contribute to the child’s support, or whose parentage has been admitted in writing by the member) who either—

“(A) is under 21 years of age; or

“(B) is incapable of self-support because of a mental or physical incapacity, and in fact dependent on the member for over one-half of his support; and

“(3) his parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least five years before the member became 21 years of age) who is in fact dependent on the member for over one-half of his support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent, and any other evidence required under regulations prescribed by the Secretary concerned, and he is not considered a dependent of the member claiming the dependence unless—

“(A) the member has provided over one-half of his support for the period prescribed by the Secretary concerned; or

“(B) due to changed circumstances arising after the member enters on active duty, he becomes in fact dependent on the member for over one-half of his support.

For the purposes of this section, the relationship between a stepparent and his stepchild is terminated by the stepparent’s divorce from the parent by blood.”

1987—Pub. L. 100-26 inserted “the term” after “In this chapter,”.

1973—Cl. (2), Pub. L. 93-64, § 103(1), in revising cl. (1) of first sentence, substituted “unmarried child” for “unmarried legitimate child” and defined dependent to include an illegitimate child whose alleged member-father has been judicially decreed to be the father of the child or judicially ordered to contribute to the child’s support, or whose parentage has been admitted in writing by the member.

Cl. (3), Pub. L. 93-64, § 104, in revising cl. (3) of first sentence, substituted “five years before the member became 21 years” for “five years before he became 21 years”, struck out requirement of actual residence of parent in the member’s household, and inserted provision respecting determination of dependency of parent, including items (A) and (B), formerly contained in former section 2201 of Appendix to Title 50, War and National Defense.

Closing text, Pub. L. 93-64, § 103(2), struck out second sentence, following cl. (3) of first sentence, stating that a person is not a dependent of a female member unless he is in fact dependent on her for over one-half of his support.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 631(b) of Pub. L. 103-160 provided that: “Section 401(a)(4) of title 37, United States Code, as added by subsection (a), shall apply with respect to determinations of dependency made on or after July 1, 1994.”

EFFECTIVE DATE OF 1973 AMENDMENT

Section 206 of Pub. L. 93-64 provided that: “This Act [enacting section 1173 of Title 10, Armed Forces, amending this section and sections 302, 302a, 303, 308a, and 403 of this title, and repealing sections 2210 to 2212 of Title 50, Appendix, War and National Defense] shall become effective July 1, 1973.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403b, 411f of this title; title 10 section 2002; title 31 section 3342.

§ 402. Basic allowance for subsistence

(a) ENTITLEMENT TO ALLOWANCE.—(1) Except as provided in paragraph (2) or otherwise provided by law, each member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for subsistence as set forth in this section.

(2) An enlisted member is not entitled to the basic allowance for subsistence during basic training.

(b) RATES OF ALLOWANCE BASED ON FOOD COSTS.—(1) The monthly rate of basic allowance for subsistence to be in effect for an enlisted member for a year (beginning on January 1 of that year) shall be the amount that is halfway between the following amounts, which are determined by the Secretary of Agriculture as of October 1 of the preceding year:

(A) The amount equal to the monthly cost of a moderate-cost food plan for a male in the United States who is between 20 and 50 years of age.

(B) The amount equal to the monthly cost of a liberal food plan for a male in the United States who is between 20 and 50 years of age.

(2) The monthly rate of basic allowance for subsistence to be in effect for an officer for a year (beginning on January 1 of that year) shall be the amount equal to the monthly rate of basic allowance for subsistence in effect for offi-

cers for the preceding year, increased by the same percentage by which the rate of basic allowance for subsistence for enlisted members for the preceding year is increased effective on such January 1.

(c) **ADVANCE PAYMENT.**—The allowance to an enlisted member may be paid in advance for a period of not more than three months.

(d) **SPECIAL RULE FOR MEMBERS AUTHORIZED TO MESS SEPARATELY.**—(1) In areas prescribed by the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, an enlisted member described in paragraph (2) is entitled to not more than the pro rata allowance established under subsection (b)(1) for each meal the member buys from a source other than a messing facility of the United States.

(2) An enlisted member referred to in paragraph (1) is a member who is granted permission to mess separately and whose duties require the member to buy at least one meal from a source other than a messing facility of the United States.

(e) **POLICIES ON USE OF DINING AND MESSING FACILITIES.**—The Secretary of Defense, in consultation with the Secretaries concerned, shall prescribe policies regarding use of dining and field messing facilities of the uniformed services.

(f) **REGULATIONS.**—(1) The Secretary of Defense shall prescribe regulations for the administration of this section. Before prescribing the regulations, the Secretary shall consult with each Secretary concerned.

(2) The regulations shall include the specific rates of basic allowance for subsistence required by subsection (b).

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 470; Pub. L. 89-444, §2(2), June 9, 1966, 80 Stat. 198; Pub. L. 93-419, §3(1)-(5), Sept. 19, 1974, 88 Stat. 1152; Pub. L. 96-513, title IV, §411, Dec. 12, 1980, 94 Stat. 2905; Pub. L. 98-94, title IX, §908(a), Sept. 24, 1983, 97 Stat. 637; Pub. L. 98-525, title VI, §605, Oct. 19, 1984, 98 Stat. 2537; Pub. L. 98-557, §17(d), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 99-145, title XIII, §1303(b)(5), Nov. 8, 1985, 99 Stat. 740; Pub. L. 102-25, title VII, §702(b)(1), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 104-106, div. A, title VI, §602(a)-(c)(1), Feb. 10, 1996, 110 Stat. 356, 357; Pub. L. 105-85, div. A, title VI, §602(a), Nov. 18, 1997, 111 Stat. 1771.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
402(a)	37:251(a) (1st sentence).	Oct. 12, 1949, ch. 681, §301, 63 Stat. 812; May 19, 1952, ch. 310, §1(d), 66 Stat. 80; Aug. 10, 1956, ch. 1041, §20(b), 70A Stat. 627; Sept. 2, 1958, Pub. L. 85-861, §10, 72 Stat. 1556.
402(b)	37:251(a) (2d and last sentences).	
	37:251(b).	
	37:251(c).	
	37:251a.	Aug. 1, 1953, ch. 305, §617, 67 Stat. 352.

HISTORICAL AND REVISION NOTES—Continued

Revised section	Source (U.S. Code)	Source (Statutes at Large)
	37:301(a) (45 words before proviso).	Oct. 12, 1949, ch. 681, §501(a) (45 words before proviso), (e) (less applicability to basic pay, incentive pay, administrative pay, and duty without pay), 63 Stat. 825, 827; July 9, 1952, ch. 608, §244, 66 Stat. 494; June 30, 1960, Pub. L. 86-559, §8, 74 Stat. 282.
402(c)	37:251(a) (less 1st, 2d, and last sentences).	
402(d)	37:251(e).	
402(e)	37:251(f).	
402(f)	37:251(d).	

In subsection (a), the words “in the amount set forth in subsection (d)” are substituted for the words “in such amounts . . . as are provided in this section”.

In subsection (b), the words “on a daily basis” are substituted for the last sentence of section 251(a) of existing title 37. The words “United States” are substituted for the word “Government”, in the 2d sentence of section 251(a) of existing title 37, section 251(b) of existing title 37, and section 251(e) of existing title 37. The word “confined” is substituted for the word “sick” for clarity. The last 16 words of the third sentence are substituted for section 251(b) (proviso) of existing title 37. The fourth sentence is substituted for section 251(a) of existing title 37. The last sentence is substituted for section 301(a) (45 words before proviso) of existing title 37 and section 301(e) (less applicability to basic pay, incentive pay, administrative pay, and duty without pay). In that sentence, the words “of a reserve component of a uniformed service, or of the National Guard” are substituted for the enumeration of the organizations concerned.

In subsection (c), the words “who are entitled to basic pay” are inserted to reflect the 1st sentence of section 251(a) of existing title 37.

In subsection (d), the reference in section 251(a) of existing title 37 to the allowance of \$1.05 per day for enlisted members granted permission to mess separately is omitted as superseded by section 251a.

In subsection (e), the words “Effective April 15, 1955,” are omitted as executed. The words “United States” are substituted for the word “Government”. The words “messing facilities” are substituted for the word “messes” to conform to subsections (b) and (d).

AMENDMENTS

1997—Pub. L. 105-85 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) relating to basic allowance for subsistence for members of the uniformed services.

1996—Subsec. (b). Pub. L. 104-106, §602(a), (b), designated first sentence as par. (1), redesignated former pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of par. (1), designated second to fourth sentences as par. (2), designated fifth and sixth sentences as par. (3), and added par. (4).

Subsec. (e)(1). Pub. L. 104-106, §602(c)(1)(A), substituted “subsection (b)(2)” for “the third sentence of subsection (b)”.

Subsec. (e)(2). Pub. L. 104-106, §602(c)(1)(B), substituted “subsection (b)(2)” for “subsection (b)”.

1991—Subsec. (e). Pub. L. 102-25 struck out “of this section” after “subsection (b)” in pars. (1) and (2).

1985—Subsec. (b). Pub. L. 99-145 inserted “or as otherwise prescribed by law” after “title” at end of fourth sentence.

1984—Subsec. (b). Pub. L. 98-525 inserted “The Secretary concerned may provide an enlisted member who could be provided rations in kind under the preceding sentence with a commutation when rations in kind are not available.”

Subsec. (d). Pub. L. 98-557 inserted provisions relating to Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

1983—Subsec. (e). Pub. L. 98-94 designated existing provisions as par. (1) and added par. (2).

1980—Subsec. (b). Pub. L. 96-513, § 411(a), inserted provisions authorizing an allowance while performing travel under orders, and struck out provisions prohibiting an allowance while being subsisted at the expense of United States.

Subsec. (e). Pub. L. 96-513, § 411(b), inserted reference to definitions of "field duty" and "sea duty".

1974—Subsec. (a). Pub. L. 93-419, § 3(1), struck out "this section or by another" after "otherwise provided by" and substituted "as set forth in this section" for "in the amount set forth in subsection (d) of this section".

Subsec. (b). Pub. L. 93-419, § 3(2), substituted provisions for allowance for enlisted members authorized to receive basic allowance for subsistence under this subsection by reference to section 1009 of this title for provisions for allowance for enlisted members on leave or were authorized to mess separately at an amount equal to the cost of ration to be determined by the Secretary of Defense.

Subsec. (c). Pub. L. 93-419, § 3(3), inserted reference to section 1009 of this title in provisions relating to the amount of basic allowance for subsistence.

Subsecs. (d) to (f). Pub. L. 93-419, § 3(4), (5), struck out subsec. (d) which related to basic allowance for subsistence for members of the uniformed services, and redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1966—Subsec. (c). Pub. L. 89-444 extended to aviation cadets of the Coast Guard the entitlement to the same basic allowance for subsistence as is provided for an officer of the Coast Guard.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 602(g) of Pub. L. 105-85 provided that: "This section [amending this section, section 404 of this title, and section 6081 of Title 10, Armed Forces, and enacting provisions set out as a note below] and the amendments made by this section shall take effect on January 1, 1998."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 605 of Pub. L. 98-525 provided that the amendment made by that section is effective Oct. 1, 1984.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by section 411 of Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-419 effective Sept. 19, 1974, see section 9 of Pub. L. 93-419, set out as an Effective Date note under section 1009 of this title.

TRANSITIONAL AUTHORITY TO PROVIDE BASIC ALLOWANCE FOR SUBSISTENCE

Section 602(c)-(f) of Pub. L. 105-85 provided that:

"(c) TRANSITIONAL AUTHORITY TO PROVIDE BASIC ALLOWANCE FOR SUBSISTENCE.—

"(1) TRANSITIONAL AUTHORITY.—Notwithstanding section 402 of title 37, United States Code, as amended by subsection (a), during the period beginning on January 1, 1998, and ending on the date determined under paragraph (2)—

"(A) the basic allowance for subsistence shall not be paid under such section 402;

"(B) a member of the uniformed services is entitled to the basic allowance for subsistence only as provided in subsection (d);

"(C) an enlisted member of the uniformed services may be paid a partial basic allowance for subsistence as provided in subsection (e); and

"(D) the rates of the basic allowance for subsistence are those rates determined under subsection (f).

"(2) TERMINATION OF TRANSITIONAL AUTHORITY.—The transitional authority provided under paragraph (1) shall terminate on the first day of the month immediately following the first month for which the monthly equivalent of the rate of basic allowance for subsistence payable to enlisted members of the uniformed services (when permission to mess separately is granted), as determined under subsection (f)(2), is equal to or is exceeded by the amount that, except for paragraph (1)(A), would otherwise be the monthly rate of basic allowance for subsistence for enlisted members under section 402(b)(1) of title 37, United States Code, as amended by subsection (a).

"(d) TRANSITIONAL ENTITLEMENT TO ALLOWANCE.—

"(1) ENLISTED MEMBERS.—

"(A) TYPES OF ENTITLEMENT.—An enlisted member is entitled to the basic allowance for subsistence, on a daily basis, of [sic] under one or more of the following circumstances:

"(i) When rations in kind are not available.

"(ii) When permission to mess separately is granted.

"(iii) When assigned to duty under emergency conditions where no messing facilities of the United States are available.

"(B) OTHER ENTITLEMENT CIRCUMSTANCES.—An enlisted member is entitled to the allowance while on an authorized leave of absence, while confined in a hospital, or while performing travel under orders away from the member's designated post of duty other than field duty or sea duty (as defined in regulations prescribed by the Secretary of Defense). For purposes of the preceding sentence, a member shall not be considered to be performing travel under orders away from his designated post of duty if such member—

"(i) is an enlisted member serving the member's first tour of active duty;

"(ii) has not actually reported to a permanent duty station pursuant to orders directing such assignment; and

"(iii) is not actually traveling between stations pursuant to orders directing a change of station.

"(C) ADVANCE PAYMENT.—The allowance to an enlisted member, when authorized, may be paid in advance for a period of not more than three months.

"(2) OFFICERS.—An officer of a uniformed service who is entitled to basic pay is, at all times, entitled to the basic allowances for subsistence. An aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to the same basic allowance for subsistence as is provided for an officer of the Navy, Air Force, Marine Corps, or Coast Guard, respectively.

"(e) TRANSITIONAL AUTHORITY FOR PARTIAL ALLOWANCE.—

"(1) ENLISTED MEMBERS FURNISHED SUBSISTENCE IN KIND.—The Secretary of Defense may provide in regulations for an enlisted member of a uniformed service to be paid a partial basic allowance for subsistence when—

"(A) rations in kind are available to the member;

"(B) the member is not granted permission to mess separately; or

"(C) the member is assigned to duty under emergency conditions where messing facilities of the United States are available.

"(2) MONTHLY PAYMENT.—Any partial basic allowance for subsistence authorized under paragraph (1) shall be calculated on a daily basis and paid on a monthly basis.

"(f) TRANSITIONAL RATES.—

"(1) ALLOWANCE FOR OFFICERS.—The monthly rate of basic allowance for subsistence for a year (beginning on January 1 of that year) that is payable to officers of the uniformed services shall be the amount that is equal to 101 percent of the rate of basic allowance for subsistence that was payable to officers of the uniformed services for the preceding year.

"(2) ALLOWANCE FOR ENLISTED MEMBER WITH PERMISSION TO MESS SEPARATELY.—The monthly rate of basic

allowance for subsistence for a year (beginning on January 1 of that year) that is payable to an enlisted member of the uniformed services entitled to the allowance under subsection (d)(1) shall be the amount that is equal to 101 percent of the rate of basic allowance for subsistence that was in effect for similarly situated enlisted members of the uniformed services for the preceding year.

“(3) PARTIAL ALLOWANCE FOR OTHER ENLISTED MEMBERS.—The monthly rate of any partial basic allowance for subsistence for a year (beginning on January 1 of that year) payable to an enlisted member of the uniformed services eligible for the allowance under the regulations prescribed under subsection (e)(1) shall be the amount equal to the lesser of the following:

“(A) The sum of—

“(i) the partial basic allowance for subsistence in effect for the preceding year; and

“(ii) the amount equal to the difference, if any, between—

“(I) the monthly equivalent of the rate of basic allowance for subsistence that was in effect for the preceding year for members of the uniformed services above grade E-1 (when permission to mess separately is granted), increased by the same percentage by which the rates of basic pay for members of the uniformed services is increased for the current year; and

“(II) the amount equal to 101 percent of the monthly equivalent of the rate of basic allowance for subsistence that was in effect for the previous year for members of the uniformed services above grade E-1 (when permission to mess separately is granted),

with the amount so determined under this clause multiplied by the number of members estimated to be entitled to receive basic allowance for subsistence under subsection (d) for the current year and then divided by the number of members estimated to be eligible for the partial allowance under the regulations prescribed under subsection (e)(1) for that year.

“(B) The amount equal to the difference between—

“(i) the amount that, except for subsection (c)(1)(A), would otherwise be the monthly rate of basic allowance for subsistence for enlisted members under section 402(b)(1) of title 37, United States Code; and

“(ii) the amount equal to the monthly equivalent of the value of a daily ration, as determined by the Under Secretary of Defense (Comptroller) as of October 1 of the preceding year.”

INCREASE IN BASIC ALLOWANCE FOR SUBSISTENCE

Pub. L. 96-343, § 7, Sept. 8, 1980, 94 Stat. 1128, provided that: “Effective September 1, 1980, the rates of basic allowance for subsistence authorized by section 402 of title 37, United States Code, as in effect on the day before the date of the enactment of this Act [Sept. 8, 1980] (as prescribed by the President under section 1009 of such title), are increased by 10 percent.”

REGULATIONS RELATING TO SUBSISTENCE ALLOWANCE

Regulations relating to basic allowance for subsistence, see Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, set out as a note under section 301 of this title.

EXECUTIVE ORDER NO. 10119

Ex. Ord. No. 10119, Mar. 30, 1950, 15 F.R. 1767, as amended by 1953 Reorg. Plan No. 1, §§ 5, 8, Apr. 11, 1953, 18 F.R. 2053; Ex. Ord. No. 10605, Apr. 22, 1955, 20 F.R. 2747, which related to regulations governing basic allowance for subsistence, was revoked by Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, set out as a note under section 301 of this title.

CROSS REFERENCES

Assimilation of pay and allowances, see section 1003 of this title.

Aviation cadets, allowances, pensions, gratuities, and other benefits, see section 6912 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 404, 420, 1003, 1009, 1012 of this title; title 10 sections 708, 6912; title 14 section 372; title 32 section 107.

§ 403. Basic allowance for housing

(a) GENERAL ENTITLEMENT.—(1) Except as otherwise provided by law, a member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for housing at the monthly rates prescribed under this section or another provision of law with regard to the applicable component of the basic allowance for housing. The amount of the basic allowance for housing for a member will vary according to the pay grade in which the member is assigned or distributed for basic pay purposes, the dependency status of the member, and the geographic location of the member. The basic allowance for housing may be paid in advance.

(2) A member of a uniformed service with dependents is not entitled to a basic allowance for housing as a member with dependents unless the member makes a certification to the Secretary concerned indicating the status of each dependent of the member. The certification shall be made in accordance with regulations prescribed by the Secretary of Defense.

(b) BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.—(1) The Secretary of Defense shall determine the costs of adequate housing in a military housing area in the United States for all members of the uniformed services entitled to a basic allowance for housing in that area. The Secretary shall base the determination upon the costs of adequate housing for civilians with comparable income levels in the same area.

(2) Subject to paragraph (3), the monthly amount of a basic allowance for housing for an area of the United States for a member of a uniformed service is equal to the difference between—

(A) the monthly cost of adequate housing in that area, as determined by the Secretary of Defense, for members of the uniformed services serving in the same pay grade and with the same dependency status as the member; and

(B) 15 percent of the national average monthly cost of adequate housing in the United States, as determined by the Secretary, for members of the uniformed services serving in the same pay grade and with the same dependency status as the member.

(3) The rates of basic allowance for housing shall be reduced as necessary to comply with this paragraph. The total amount that may be paid for a fiscal year for the basic allowance for housing under this subsection is the product of—

(A) the total amount authorized to be paid for such allowance for the preceding fiscal year (as adjusted under paragraph (5)); and

(B) a fraction—